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March 4, 2005

VIA COURIER

Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5642

Dear Mr. Jordan:

This Response, including attachments, is submitted on behalf of the Columbus Metropolitan Club ("CMC" or "the Club") in response to the complaint filed by the National Legal and Policy Center ("NLPC") in MUR 5642. For the reasons set forth below, the Federal Election Commission should find that there is no reason to believe that the Club violated any provision of the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, or applicable Federal Election Commission ("FEC" or "the Commission") regulations.

Summary of Allegations

On the first page of its complaint, the NLPC boldly proclaims that the respondents in MUR 5462, including the Club, "knowingly and willfully violated" FECA. NLPC Complaint at

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1. The NLPC's allegations against the Club in the following twenty-one pages of the complaint, however, are principally noteworthy for their lack of precision in explaining exactly how the Club violated FECA by sponsoring a speech by a private citizen on the topic of U.S. policy toward Iraq. The NLPC's principal allegation against the Club appears to be that it violated the Internal Revenue Code by sponsoring a public forum on a controversial government policy during which a private citizen expressly advocated the defeat of a candidate for federal office as the only way to prevent the continuation of the government policy. NLPC Complaint at 7, 17-18. This allegation is both incorrect as a matter of federal tax law and completely irrelevant to a proceeding before the Federal Election Commission.

The NLPC complaint then goes on to allege different – and mutually exclusive – theories as to how the Club's sponsorship of the October 13, 2004 Soros forum violated FECA. The NLPC initially alleges that the Club's sponsorship of the forum constituted an impermissible independent expenditure by the Club in opposition to the re-election of George W. Bush.¹ NLPC Complaint at 7. Later in the complaint, however, the NLPC alleges that the Club made an impermissible corporate contribution in violation of 2 U.S.C. § 441b "by spending corporate resources to promote the defeat of President George W. Bush." NLPC Complaint at 18.

The only apparent way to reconcile the NLPC's conflicting claims is to assume that they intended to argue that the Club's sponsorship of the October 13, 2004 Soros event was a contribution to Mr. Soros, who then used that contribution to make his own independent expenditure in opposition to the re-election of George W. Bush. Contributions to persons

¹ The NLPC cites "11 C.F.R. § 110.16.16(a)" as the basis for its allegation that the Club's sponsorship of the Soros forum constituted an impermissible independent expenditure. NLPC Complaint at 7. There is, of course, no such regulation. The NLPC apparently meant to refer to the definition of independent expenditure at 11 C.F.R. § 100.16(a). The inability of the NLPC to correctly identify the FEC regulation it alleges was violated by the Club appears to be indicative of the NLPC's understanding of FECA and the activities it regulates.

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making independent expenditures are subject to the limitations and prohibitions of FECA. If this is indeed what the NLPC intended to argue, however, it demonstrates a fatal flaw in the NLPC's understanding of FECA and the activities it regulates. The NLPC interprets the Act's prohibition on the use of corporate funds to pay for independent expenditures as preventing a corporation from sponsoring a public forum on a controversial government policy at which a private citizen expressed his personal views on whether the president should be re-elected. The Act simply does not reach that far, nor could it and remain consistent with the First Amendment. The NLPC interprets the Act's definition of independent expenditure as prohibiting the use of corporate funds to pay for any event at which there is any public utterance that expressly advocates the defeat of a clearly identified federal candidate. In fact, the Act only prohibits the use of corporate contributions to pay for certain specified forms of paid political advertising. Simply put, Mr. Soros's speech before the Columbus Metropolitan Club did not constitute an independent expenditure within the meaning of the Act. Nothing the Club did in connection with the Soros appearance, therefore, constitutes a corporate contribution prohibited by 2 U.S.C. § 441b.

Moreover, even assuming *arguendo* that the October 13, 2004 Soros appearance constituted an independent expenditure by Mr. Soros, the actions taken by the Club in connection with the Soros appearance still would not qualify as contributions to Mr. Soros's so-called "independent expenditure campaign." The NLPC complaint refers to a number of specific actions the Club took in connection with the October 14, 2004 Soros event that the NLPC apparently contends constitute impermissible corporate contributions to Mr. Soros, including: (1) an item in the Club newsletter including an accurate quote from Mr. Soros's speech at the October 13, 2004 event (NLPC Complaint at 7), (2) the alleged distribution by Club personnel of

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Soros literature opposing the re-election of George W. Bush (*Id.*), and (3) allegedly using corporate funds to pay for the hotel room where the October 13, 2004 event was held (*Id.*). The NLPC's allegation that the newsletter item was an impermissible contribution is simply incorrect as a matter of law. Moreover, the NLPC's allegations with regard to the distribution of literature and the use of corporate funds to pay for the hotel room are factually incorrect.

Statement of Facts and Discussion of Authority

As discussed in greater detail below, there is no reason to believe that the Club committed any violation of FECA or FEC implementing regulations in sponsoring the October 13, 2004 Soros event that is the subject of MUR 5642.

The Allegation that the Club Violated the Internal Revenue Code by Sponsoring the Soros Event is Both Incorrect as a Matter of Tax Law and Irrelevant to a Proceeding Before the Federal Election Commission

The principal focus of the NLPC's complaint appears to be an issue of tax law, not an issue of campaign finance law. The NLPC appears to believe that the Club's sponsorship of a public forum on an issue of government policy was inconsistent with its status as a tax exempt organization because a private citizen speaking at that forum made a statement expressly opposing the election of a federal candidate. NLPC Complaint at 6-7. This allegation is simply incorrect as a matter of federal tax law and, in any event, is beyond the jurisdiction of the Federal Election Commission.

One of the few accurate statements in the NLPC's complaint is that the Columbus Metropolitan Club is a non-profit corporation organized pursuant to 26 U.S.C. § 501(c)(3). NLPC Complaint at 5; Affidavit of Jane Scott at ¶ 6 (attached as Attachment 1) ("hereinafter "Scott Affidavit"). The NLPC's contention that the Club's sponsorship of the October 13, 2004

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Soros event was inconsistent with its status as a tax-exempt organization is based on a gross misunderstanding of the Internal Revenue Code's restrictions on political activities by 501(c)(3) organizations. The Internal Revenue Service ("IRS") has advised charities that 26 U.S.C. § 501(c)(3) precludes them from "participating or intervening in any political campaign on behalf of, or in opposition to, any candidate for public office." I.R.S. News Release IR-2004-59 (Apr. 28, 2004). The IRS has taken the position that charities may not, therefore, "endorse any candidates, make donations to their campaigns, engage in fundraising, distribute statements, or become involved in any other activities that may be beneficial or detrimental to any candidate." *Id.* The IRS has specified, however, that a 501(c)(3) organization like the Club "may sponsor debates or forums to educate voters." *Id.*

The fact that the IRS has specifically authorized 501(c)(3) organizations to hold forums like those sponsored by the Club is sufficient to dispense with the NLPC's tax code violation allegations. A closer examination of the NLPC's allegations, however, shows definitively that the NLPC's allegations are based on an incorrect interpretation of the facts surrounding the Club's sponsorship of the October 13, 2004 Soros event.

The NLPC appears to have two alternative theories as to how the Club allegedly abused its tax exempt status by sponsoring the October 13, 2004 Soros event. The NLPC apparently believes that the Club sponsored the event for the principal purpose of providing a platform for Mr. Soros to oppose the re-election of George W. Bush. NLPC Complaint at 17-18.

Alternatively, the NLPC apparently believes that the Club's sponsorship of the event somehow constituted an endorsement of Mr. Soros's statements in opposition to the re-election of George W. Bush. NLPC Complaint at 7. Neither one of these theories is supported by the facts. The

Club agreed to sponsor Mr. Soros's appearance because its members had expressed an interest in hearing his criticism of the Bush administration's policy toward Iraq, not because of his views on the 2004 presidential election. No representative of the Club endorsed any of the views expressed by Mr. Soros - including his views on the 2004 presidential election - before, during or after the October 13, 2004 forum. Moreover, the Club in organizing the October 13, 2004 event took a number of steps to ensure that the Club could not even be perceived as endorsing Mr. Soros's views.

The Club was established in 1976 to promote the open exchange of information and ideas among the residents of central Ohio by providing a forum for free expression and fair debate examining many aspects of issues that confront the community, state, nation and the world. Scott Affidavit at ¶¶ 3-5. The Club provides the opportunity for discussion and debate among various viewpoints and constituencies through regularly scheduled luncheon forums. *Id.* at ¶ 6. In the 2003-2004 fiscal year ending August 31, 2004, the Club planned and hosted 49 forums with total attendance of nearly 6, 400 individuals. More than 131 local, regional, national and international speakers discussed health, art, politics, international relationships, the economy, business, social needs, civil liberties and other newsworthy topics at the weekly forums. *Id.* at ¶ 7.

The Club strives to remain completely neutral and does not advertise, promote, endorse or otherwise advocate or oppose any person, candidate, position or ideology. *Id.* at ¶ 8. In the summer of 2004, the Club faced an unusual situation where a number of speakers appeared almost back-to-back supporting the Bush administration policy on Iraq. *Id.* at ¶ 17. The first forum on the topic of Iraq policy featured two women from Iraq sponsored by the U.S. State

Department with support from the American-Iraqi-Freedom Alliance. Surood Ahmed, a women's activist from Kirkuk, Iraq, and Taghreed Al-Qaragholi, a women's activist from Baghdad, Iraq, were traveling throughout the United States and were brought to the attention of the Club by the Columbus Council on World Affairs, which co-hosted the CMC forum featuring the women on August 3, 2004. *Id.* at ¶ 18. See also *Next TUESDAY at CMC - August 3 - Bringing Democracy to Iraq: Personal Perspectives on the Past, Present and Future*, The Daily Reporter, July 28, 2004, at 9, col. 2 (attached as Attachment 2). Their presentation was extremely well received by many Club members, but boycotted by others. While not overtly promoting the agenda of the Bush administration by name, the views they expressed supported current U.S. policy toward Iraq. Some Club members responded negatively to what they perceived was a "pro-Bush administration" forum on Iraq policy. Scott Affidavit at ¶ 19.

Purely by coincidence, the following couple of weeks featured several prominent Republican officer holders who supported Bush administration policies, including the Bush administration policy on Iraq. *Id.* at ¶ 20. See also *Next Wednesday at CMC - August 18 at Columbus Renaissance Hotel - Washington Update - Representative Deborah Pryce, United States House of Representatives*, The Daily Reporter, August 11, 2004, at 9, col. 2 (attached as Attachment 3); *Next Wednesday at CMC - September 15 - Ohio Governor Bob Taft*, The Daily Reporter, September 8, 2004, at 9, col. 2 (attached as Attachment 4). These appearances generated more criticism and further comments regarding a perceived "pro-Bush administration" posture on Iraq by the CMC. Scott Affidavit at ¶ 20.

The CMC's Program Committee and Board of Trustees became concerned about this perception and began looking for forum topics and speakers to balance the programming. *Id.* at ¶

21. In September, Club Executive Director Jane Scott received a phone call from the Executive Director of the Columbus Council on World Affairs ("CCWA"), the organization that had co-hosted the presentation by the women from Iraq. The CCWA said they had been approached by representatives of George Soros and wanted to know if the Club would like to host a forum featuring Mr. Soros. *Id.* at ¶ 22. The proposal for the Soros forum was forwarded to the CMC's Program Committee, where it was the subject of a heated discussion. The Committee agreed to schedule a forum featuring Mr. Soros to balance the Club's programming on the issue of U.S. policy toward Iraq. *Id.* at ¶¶ 21, 23. Due to a scheduling conflict, the speakers originally scheduled for Wednesday, October 13, 2004 had been rescheduled for a later date, leaving the CMC with a "hole" for a prime Wednesday in October. The Club considered it fortuitous to be able to schedule Mr. Soros to fill the routine forum calendar. *Id.* at ¶ 24.

The facts demonstrate that the Club did not schedule the October 13, 2004 forum to provide Mr. Soros with a platform to oppose the re-election of George W. Bush. Instead, the Club scheduled Mr. Soros to appear to provide a counterbalance to a series of forums at which a number of speakers had spoken in favor of the Bush administration's policy in Iraq, causing Club members to begin questioning the Club's neutrality on that topic.

Nor is there any basis in fact for the NLPC's apparent belief that, by sponsoring the October 13, 2004 Soros event, the Club somehow endorsed Mr. Soros's views on the 2004 presidential election. The Club strives to remain completely neutral and has established procedures designed to prevent even the perception that the Club is endorsing any person, candidate, position or ideology. Scott Affidavit at ¶ 8. These procedures were followed to the letter on October 13, 2004. Jim Elliott, President of the CMC Board of Trustees, was given a

CMC staff-prepared neutral script to use at the beginning and the end of the October 13, 2004 forum. *Id.* at ¶ 28; Announcements and Moderator Introduction for Wednesday, October 13, 2004 (attached as Attachment 5). To preserve the CMC's neutrality, Mr. Elliott did not even introduce Mr. Soros. Instead, Mr. Elliott welcomed the guests and introduced Mr. Soros's traveling companion, former diplomat George Moose, who in turn introduced Mr. Soros. Scott Affidavit at ¶ 28; Attachment 5 at 4. After Mr. Soros's presentation, Mr. Elliott read another brief neutral statement before opening the floor to questions from the audience. Scott Affidavit at ¶ 28; Attachment 5 at 4. Neither Mr. Elliott nor any other representative of the CMC endorsed any of the views expressed by Mr. Soros – including his views on the 2004 presidential election – before, during or after the October 13, 2004 forum. Scott Affidavit at ¶ 33.

The facts do not support the NLPC's apparent belief that by sponsoring the October 13, 2004 Soros event, the Club somehow endorsed Mr. Soros's views on the 2004 presidential election and thereby abused its status as a tax-exempt organization under the Internal Revenue Code. Accordingly, there is no reason to believe that the Club violated any provision of the tax code by sponsoring the October 13, 2004 Soros event. The NLPC's tax code violation allegations are not only incorrect, they are completely irrelevant to this proceeding. The Federal Election Commission has consistently held, over a period of more than twenty years, that the Commission has no jurisdiction over questions regarding an organization's qualifications for tax exempt status under 26 U.S.C. § 501(c). FEC Advisory Opinions 2004-30, 2004-15, 1997-1, 1993-6, 1992-10, 1987-7, 1986-37, 1986-26 and 1984-41. Accordingly, the Commission must simply dismiss the NLPC allegations regarding the Club's alleged violations of the Internal Revenue Code.

The October 13, 2004 Soros Event Did Not Constitute an Independent Expenditure within the Meaning of the Act

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The central campaign finance allegation of the NLPC complaint is that the October 13, 2004 Soros appearance before the Club was part of an "independent expenditure campaign" by Mr. Soros in opposition to the re-election of President George W. Bush. NLPC Complaint at 7. The NLPC alleges that by sponsoring the Soros appearance, the Club made an impermissible corporate contribution to Mr. Soros's so-called "independent expenditure campaign" in violation of 2 U.S.C. § 441b. NLPC Complaint at 18. The Club's alleged violation of 2 U.S.C. § 441b, therefore, is dependent on the Soros appearance before the Club constituting an independent expenditure within the meaning of FECA.

The Act defines an independent expenditure as an expenditure by a person that expressly advocates the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. 2 U.S.C. § 431(17). The FEC regulation implementing 2 U.S.C. § 431(17), however, limits the scope of the definition of independent expenditure by specifying that the term only applies to expenditures for a communication that expressly advocates the election or defeat of a clearly identified candidate. 11 C.F.R. § 100.16(a)(emphasis added). The NLPC apparently interprets 11 C.F.R. § 100.16(a) as applying to any public statement that includes express advocacy. The Act and the Commission's implementing regulations, however, make it clear that the definition of independent expenditure only applies to expenditures for certain specified forms of paid political advertising. The Commission's regulations on independent expenditures apply only to two statutorily defined categories of communications: electioneering communications and public

communications. 11 C.F.R. § 109.21(c). The appearance of Mr. Soros before the Club on October 13, 2004 does not meet the statutory definition of either an electioneering communication or a public communication. The Act and the Commission's implementing regulations define an electioneering communication as any broadcast, cable, or satellite communication which refers to a clearly identified candidate for Federal office and is made within 60 days of the general election. 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29(a). Mr. Soros's speech to the Club was made within 60 days of the November 2, 2004 general election and in his speech he did refer to a clearly identified candidate for Federal office, but his speech to the Club was made in person and was not a broadcast, cable or satellite communication.²

Similarly, both the Act and the Commission's implementing regulations define the term "public communication" as "a communication *by means of* any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26 (emphasis added). Once again, Mr. Soros did not communicate with the Club by any of these means, so his speech before the Club simply does not meet the statutory definition of a public communication.

In limiting the term "independent expenditure" to expenditures for certain specified forms of political advertising, Congress made a principled distinction between public political advertising and public political debate. Political advertising is, by definition, a one-way form of

² The Commission's electioneering communication regulations define a broadcast, cable or satellite communication as a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29(b)(1). The regulations then define the term "publicly distributed" to mean aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29(b)(3). Mr. Soros appeared before the Club in person and did not receive a fee. Scott Affidavit at ¶ 32). These regulations make it clear that the Act governs only specific forms of paid political advertising – not a public forum where a private citizen airs his personal views on a Federal candidate.

communication by which candidates disseminate a message to the general public, not all of whose members are eager or even willing to receive that message. Political debate, however, is by its very nature a form of two-way communication between candidates and members of the general public who willingly seek out the opportunity to hear a candidate's message and either support or dispute that message with the candidate and other members of the public. This form of public debate lies at the very core of political activity protected by the First Amendment.

The Commission recognized the congressional distinction between public political advertising and public political debate when it promulgated the definition of "public communication" in 11 C.F.R. § 100.26. In its Explanation and Justification for 11 C.F.R. § 100.26, the Commission declined to expand the definition of general public political advertising to include communications over the Internet. The Commission recognized that Congress had included on the list of regulated forms of political advertising various types of one-way communications, while, at the same time, "Congress did not include other forms of two-way dialogue such as candidate forums, rallies, debates, or other events that are open to the public." Explanation and Justification, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49071-72 (July 29, 2002). The Commission should not now deviate from Congress's determination that only certain specified forms of paid political advertising constitute electioneering or public communications.

Because Mr. Soros's speech to the Columbus Metropolitan Club was neither an electioneering communication nor a public communication, the October 13, 2004 Soros appearance does not meet the statutory definition of an independent expenditure. If the Soros appearance does not constitute an independent expenditure by Mr. Soros, it goes without saying

that nothing the Club did in support of the appearance may be construed to be an impermissible corporate contribution to Mr. Soros's so-called "independent expenditure campaign" in violation of 2 U.S.C. § 441b.

Even Assuming *Arguendo* that the Soros Event was an Independent Expenditure by Mr. Soros, the Actions the Club Took in Connection with the Soros Event Did Not Constitute Contributions Within the Meaning of the Act

The flaws in the NLPC's complaint in MUR 5642 are not limited to its fatal misunderstanding of the concept of an independent expenditure. The NLPC complaint also demonstrates that the NLPC has, at best, a limited understanding of what constitutes a contribution under FECA. As discussed in detail above, the NLPC's allegation that the Club made impermissible corporate contributions to Mr. Soros's so-called "independent expenditure campaign" fails because the October 13, 2004 Soros event did not constitute an independent expenditure within the meaning of the Act. The Commission should find that there is no reason to believe that the Club violated FECA or FEC implementing regulations on that basis alone. The deficiencies in the NLPC's complaint, however, are all the more glaring when you consider that, assuming for purposes of argument that the Soros event was an independent expenditure by Mr. Soros, the actions the Club took in support of the Soros event do not constitute "contributions" within the meaning of FECA.

The NLPC complaint refers to a number of specific actions the Club took in connection with the October 13, 2004 Soros event that the NLPC claims are prohibited corporate contributions by the Club to Mr. Soros's so-called "independent expenditure campaign," including, (1) an item in the October 20, 2004 Club newsletter containing an accurate quote from Mr. Soros's October 13, 2004 speech (NLPC Complaint at 7), (2) the alleged distribution by

Club personnel of Soros literature opposing the re-election of George W. Bush (*Id.*), and (3) the alleged use by the Club of corporate funds to pay for the hotel room where the October 13, 2004 Soros event was held (*Id.*). The NLPC's allegation that the Club newsletter item reporting on Mr. Soros's appearance before the Club is an impermissible contribution is simply incorrect as a matter of law. Moreover, the NLPC's allegations with regard to the distribution of literature and the use of corporate funds to pay for the hotel room are factually incorrect.

The Item on the Soros Appearance in the October 20, 2004 CMC Newsletter Does Not Constitute a Contribution under FECA

The NLPC contends that by running an item in its Club newsletter accurately reporting what Mr. Soros said during his October 13, 2004 speech, the Club made an impermissible corporate contribution to Mr. Soros's so-called "independent expenditure campaign." NLPC Complaint at 7. This allegation proves nothing other than that the NLPC failed to read the Act and the Commission's implementing regulations before submitting its complaint. Had the NLPC read the statute and regulations, it would have known that they specifically exempt press reports from the definition of contribution. 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 100.73; 11 C.F.R. § 100.132.

The newsletter item the NLPC complains of consists solely of two photographs taken at the October 13, 2004 Soros event and two direct quotes from Mr. Soros's speech to the Club. *See October 13 at CMC . . . George Soros Criticizes Bush Policy in Iraq*, The Daily Reporter, Oct. 20, 2004, at 11, col. 2 (attached as Attachment 6). This is the standard format the Club uses to report on every Club forum. Scott Affidavit at ¶¶ 16, 30; Affidavit of Lori Marlow at ¶¶ 6, 7 (attached as Attachment 7)(hereinafter "Marlow Affidavit"). The Club's newsletter is published every Wednesday as the front page of the inside section of The Daily Reporter. Scott Affidavit

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at ¶ 16. The Daily Reporter is a privately owned and operated general circulation legal newspaper serving the Columbus business community. *Id.* The Daily Reporter is sold by subscription and on newsstands. *Id.* The Daily Reporter mails its Wednesday edition containing the Club newsletter to all of its regular subscribers as well as approximately 1,200 Club members, sponsors and guests. *Id.* The total circulation for the Wednesday edition of The Daily Reporter is approximately 6,200. *Id.* Club newsletter articles, including the October 20, 2004 item cited in the NLPC complaint, are prepared by Club staff and then published by The Daily Reporter. *Id.*; Marlow Affidavit at ¶ 7. Neither the CMC newsletter nor The Daily Reporter is owned or controlled by a political party, political committee or a candidate. Scott Affidavit at ¶¶ 6, 16.

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. § 441b(a). The Act then defines the terms "contribution" and "expenditure" to include any gift of money or "anything of value" for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(1); 2 U.S.C. § 431(9)(A)(i). The Act and the Commission's implementing regulations, however, exempt from the definitions of contribution and expenditure any cost "incurred in covering or carrying a news story . . . by any . . . newspaper, magazine or other periodical publication . . . unless the facility is owned or controlled by any political party, political committee, or candidate" 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 100.73; 11 C.F.R. § 100.132.

The courts have interpreted the press exemption broadly to preclude any Commission investigation of press activities that fall within the scope of the exemption. Reader's Digest Ass'n. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981); FEC v. Phillips Publishing, Inc., 517

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F. Supp. 1308, 1312 (D.D.C. 1981). Accordingly, the Commission is limited to merely "determining whether the press exemption is applicable." Reader's Digest at 1214. This limited inquiry requires two steps. First, the Commission must determine whether the entity seeking to invoke the press exemption is a press entity as described by the Act and Commission regulations. FEC Advisory Opinions 2004-7, 2003- 34, 2000-13, 1998-17, 1996-48, 1996-41 and 1996-16. If so, the Commission may only seek to answer two questions: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate, and (2) whether the press entity was acting as a press entity in conducting the activity at issue. Reader's Digest at 1215; see also Phillips Publishing at 1312-13; FEC Advisory Opinions 2004-7, 2000-13, 1996-48, 1982-44.

The CMC newsletter is clearly a press entity eligible for the press exemption. Both the Act and the Commission's regulations specify that the press exemption is available not just to newspapers and magazines, but also to "other periodical publication[s]" 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 100.73; 11 C.F.R. § 100.132. The courts have specifically recognized that newsletters are periodical publications that may invoke the press exemption. Phillips Publishing at 1313; see also FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 250 (1986)(assuming without deciding that the regularly published newsletter of a nonprofit corporation would be eligible for the press exemption). Moreover, unlike the newsletters in Phillips Publishing and Massachusetts Citizens for Life, the CMC newsletter is regularly published in a general circulation newspaper. As noted above, the CMC newsletter appears in every Wednesday's issue of The Daily Reporter, a general circulation legal newspaper serving the Columbus, Ohio business community. Scott Affidavit at ¶ 16. The Daily Reporter is sold by subscription and on newsstands and the Wednesday edition of The Daily Reporter has a total

circulation of approximately 6,200. Id. There is, accordingly, no doubt the CMC newsletter is a press entity within the meaning the Act and the Commission's implementing regulations.

Nor is there any doubt that the CMC newsletter satisfies the Reader's Digest test for application of the press exemption. First, neither the CMC newsletter nor The Daily Reporter are owned or controlled by a political party, political committee or candidate. Scott Affidavit at ¶¶ 6, 16. Second, it can scarcely be argued that the CMC newsletter was acting as anything other than a press entity when it reported on Mr. Soros's appearance before the Club. The purpose of the CMC newsletter is to inform Club members and the general public about Club activities, including announcements regarding upcoming events and reports on previously held forums. Scott Affidavit at ¶ 16. Unlike the "Special Edition" newsletter in Massachusetts Citizens for Life, the October 20, 2004 CMC newsletter item on the October 13, 2004 Soros event was prepared by the same CMC staff who prepare all of the CMC newsletters. Scott Affidavit at ¶ 16; Marlow Affidavit at ¶¶ 6, 7. Moreover, the item itself was identical in form and content to every other CMC newsletter report on a previously held forum. Scott Affidavit at ¶¶ 16, 30; Marlow Affidavit at ¶ 7. Compare August 3 at CMC . . . Iraqi Women Welcome American Troops and Hope for Democracy, The Daily Reporter, Aug. 11, 2004, at 9, col. 3 (attached as Attachment 3) with October 13 at CMC . . . George Soros Criticizes Bush Policy in Iraq, The Daily Reporter, Oct. 20, 2004, at 11, col. 2 (attached as Attachment 6).

The CMC newsletter item on the October 13, 2004 Soros event clearly meets the Reader's Digest test for application of the press exemption. The CMC newsletter item, therefore, does not constitute a "contribution" within the meaning of the Act.

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The CMC Staff Did Not Distribute Any Soros Literature Opposing the Re-Election of President George W. Bush at the October 13, 2004 Soros Event

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The NLPC alleges that the Club made an impermissible corporate contribution to Mr. Soros's so-called "independent expenditure campaign" by having Club personnel distribute "copies of the Soros direct mail piece with the headline 'Why We Must Not Re-Elect President Bush'" at the October 13, 2004 Soros event. NLPC Complaint at 7. This allegation is simply false. Indeed, not only did Club personnel not distribute any Soros literature, they actually intervened to prevent the distribution of any literature within the confines of the CMC forum.

Speakers appearing before the CMC generally do not pass out literature at Club forums. Scott Affidavit at ¶ 12. If a forum consists of multiple speakers presenting many sides of a controversial issue, the Club allows the speakers to provide literature representing their respective points of view. *Id.* All such literature must be pre-approved by CMC staff before it may be distributed at a CMC event. *Id.*; Marlow Affidavit at ¶ 5. If the forum consists of only one speaker discussing a controversial topic, however, the Club does not allow the speaker or anyone adverse to the speaker's point of view to distribute any literature within the confines of the CMC forum. *Id.*

On the morning of the Soros event, CMC Program Coordinator Lori Marlow arrived at the Columbus Hyatt Regency at approximately 10:00 a.m. to prepare for the forum. Marlow Affidavit at ¶ 5. During the process of setting up the hotel room for the forum, Ms. Marlow noticed two or three people placing literature on chairs in the room that been reserved for the event. *Id.*; Scott Affidavit at ¶ 27. None of these people were members of the CMC staff. Marlow Affidavit at ¶ 5. Ms. Marlow explained the CMC's policy on the distribution of literature at CMC events and made it clear to them that they could not distribute their literature at

the CMC event in any way. *Id.*; Scott Affidavit at ¶ 27. Ms. Marlow removed all of the literature that had been placed in the hotel room and returned it to the people who had been distributing it. Marlow Affidavit at ¶ 5.

The NLPC's allegation that the Club made a contribution to Mr. Soros's so-called "independent expenditure campaign" by having Club personnel distribute copies of Soros literature opposed to the re-election of President George W. Bush at the October 13, 2004 Soros event simply has no basis in fact and should, accordingly, be rejected by the Commission out of hand.

The CMC Did Not Use Corporate Funds to Pay for the Hotel Room Where the October 13, 2004 Soros Event Was Held

Finally, the NLPC complaint argues that the Club made an impermissible corporate contribution to Mr. Soros's so-called "independent expenditure campaign" by using corporate treasury funds to rent the hotel room at the Columbus Hyatt Regency where the October 13, 2004 Soros event was held. NLPC Complaint at 7. Of all the flawed arguments made by the NLPC in its complaint, this one is the most bizarre given that the NLPC itself concedes that the event was paid for using funds derived from ticket sales to the general public. NLPC Complaint at 6. In fact, the CMC did not use any funds from its corporate treasury to pay for the hotel room where the Soros event was held. Once the Club decided to sponsor a forum featuring Mr. Soros, it became the responsibility of CMC Program Coordinator Lori Marlow to secure a location for the event. Marlow Affidavit at ¶ 3; Scott Affidavit at ¶ 26. The Club expected up to 500 guests for the October 13, 2004 forum, so Ms. Marlow inquired about space at some of the larger venues in downtown Columbus, Ohio. Marlow Affidavit at ¶ 3. Based on the availability of a room of the appropriate size and the fact that the Club had held several successful events there in

the past, the Club chose to hold the October 13, 2004 event at the Columbus Hyatt Regency. Id. The Hyatt Regency did not require a down payment or any other funds in advance of the October 13, 2004 event. Id. Accordingly, no funds from the Club's corporate treasury were expended to reserve the use of the hotel room for the October 13, 2004 event.

All Club forums are paid for using the proceeds from ticket sales to Club members and the general public. Scott Affidavit at ¶¶ 25, 26; Marlow Affidavit at ¶ 8. The Club uses the same procedure for selling tickets to all Club forums. Marlow Affidavit at ¶ 8. CMC members and members of the general public must reserve tickets for a forum and must pay for their tickets by check, cash or credit card in advance of the forum. Id. Following the event, the Club processes the credit card charges and the cash and checks are deposited. Id. When the Club receives an invoice from the facility where the event was held, the Club sends a check to that facility drawing on the funds that had been generated by the ticket sales for that event. Id. The process of paying for the October 13, 2004 event was no different. Id. The October 13, 2004 event was attended by approximately 370 individuals who paid a total of \$8,075.00 for tickets to attend. Id. The Columbus Hyatt Regency charged the Club a total of \$4,704.30 for the use of their facilities for the October 13, 2004 event. Id. The Hyatt Regency invoice for the October 13, 2004 event was paid using exclusively the funds generated by ticket sales. Id. The revenue generated by ticket sales to the event more than covered the direct cost of holding the event at the Hyatt Regency. Id. In fact, the revenue from ticket sales to the October 13, 2004 event covered the entire cost of the forum, including all the indirect costs of administration and marketing the event. Scott Affidavit at ¶ 34.

The NLPC's allegation that the Club violated 2 U.S.C. § 441b by using corporate treasury funds to pay for the hotel room where the October 13, 2004 event was held is simply incorrect and should be rejected by the Commission.

Conclusion

The NLPC's deeply flawed complaint against the Club provides no basis for the Commission to conclude that there is reason to believe that the Club violated FECA or FEC implementing regulations. The NLPC's principal complaint appears to be that the Club violated the Internal Revenue Code by sponsoring a public forum at which a private citizen opposed the re-election of a federal candidate. This allegation is simply incorrect as a matter of tax law and, in any event, is a question beyond the jurisdiction of the Federal Election Commission. The NLPC's principal campaign finance complaint against the Club appears to be that the Club allegedly violated 2 U.S.C. § 441b by making a corporate contribution to Mr. Soros's so-called "independent expenditure campaign." This allegation is based on a fundamental misunderstanding of the concept of an independent expenditure. Simply put, Mr. Soros's speech to 370 individuals in a hotel room in Columbus, Ohio does not meet the statutory definition of an independent expenditure. If the Soros speech does not constitute an independent expenditure, nothing the Club did in connection with that speech could be construed to be a corporate contribution to Mr. Soros's so-called "independent expenditure campaign." Finally, even assuming *arguendo* that Mr. Soros's speech was an independent expenditure, the actions taken by the Club in connection with that speech do not meet the definition of a contribution under FECA. The NLPC's allegation that an item in the CMC newsletter containing an accurate quote from Mr. Soros's speech was an impermissible corporate contribution is simply incorrect as a

matter of law. Moreover, the NLPC's allegations that the Club made impermissible corporate contributions by distributing Soros literature and using corporate treasury funds to pay for the hotel room where the forum was held are factually incorrect.

For the reasons stated above, the Commission should find that there is no reason to believe that the Columbus Metropolitan Club violated any provision of the Federal Election Campaign Act of 1971, as amended, or applicable Federal Election Commission regulations.

Sincerely,



Brett G. Kappel
Vorys, Sater, Seymour and Pease LLP
Counsel for the Columbus Metropolitan Club

Enclosures

ATTACHMENT 1

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ATTACHMENT 1 HAS BEEN REMOVED

ATTACHMENT 2

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**27 years of
diversity • discussion • debate**

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Abstract

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Reservations & Questions? Call

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ATTACHMENT 3

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ATTACHMENT 4

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 Tel: (614) 464-3320 • Fax: (614) 464-9767 • E-mail: staff@columbusenrichment.com

Ohio Governor Bob Taft

was elected to his second term as Governor in November 2002. Please join us on Wednesday, September 15 for an update on the issues that effect the state. Governor Taft will also discuss access to health care with a particular emphasis on the explosive growth in Medicaid spending.



Two

CMC firmly believes expression of all ideas fits of an open exchange time. CMC is non-partisan positions on issues.

**Anyone can join! Fr
ning, there have been
membership and all for
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welcome.**

Each forum is an hour long that starts with a question followed by 25-30 speaker comments. The hour is filled with unfiltered questions from the audience.

Call CMC at (614)
more information.

James E. Anderson **June**
Michael Vay of Constant Oil
Jim Wilson **June**
Michael Altmann
James Murphy **June**
Robertson Inc. & Co.
IBM Atlanta **June**
Washington Bank
William A. Adams **June**
James C. Adams Farm
Dr. Mark Allen
The Ohio State University
James Hollings
Pepperdine Research Center
William M. Fox
Ohio Ave. & Sports
Providence Corporation
Anthony T. Graham
Charles Matthews
Smith
William "Lew"
W. Warden
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Ann Shaw
Lori Mueller *Programs*
Wick Wilson *Admin*

Colorado Management Club
500 E. Broad St., Suite 2020
Colorado, CO 80513
Office: (303) 424-3228
Fax: (303) 424-7707
E-mail: CMC@coloradomanagementclub.com

Abstract

Honda of America CEO praises partnership with Ohio

"It's true that in 1979, our first year of production in Ohio, we faced many challenges. But Honda was committed to its business model and global strategy – which was to build vehicles close to our customers."

• **Коты и собаки**



John Adams of Honda of America; forum sponsor Susan Insley of the Cashron Group, Inc.; Kelli Hirshbom, CEO of Honda of America; and, Tom Lake of Honda of America.



Kid Miracles with Super attendees.
Sherril Smith.

"It's amazing to see the far-reaching impact that Honda's growth has had throughout North America and on Ohio's economy: some 16,000 jobs, new business for Ohio companies and - illustrating the wisdom of Ohio's investment in Honda - an economic payback of \$40 for every one dollar the state provided in direct incentives."

— Koki Hirasawa



CMC member Orvell Johns with Founder of America's John Adams.

**Reservations are Easy
Questions? Call (614) •**

CMC forums are held at Athletic Club of Columbia

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**Columbus Metropolitan Club, OSU
Franklin Co. Alumni Club & Young
Bucks of Central Ohio**

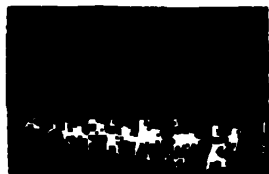
Presently present:

The Season Opener

**A reception for members & guests
Thursday, September 23, 2004
5:30 pm to 8:00 pm
Old Stadium, Huntington Club Suite
411 Woody Hayes Dr., Columbus, OH
43210**

**Parking available in West Stadium Lot,
Gates 7-27**

**Join us for an evening of:
Cocktails • Tailgate food
Press Box Tour
Adrenaline-pumping performances
by the OSU cheerleaders**



Score big with CMC, the OSU Franklin Co. Alumni Club & the Young Bucks of Central Ohio as we bring you an evening filled with fun and discovery!

\$10 for CAC members, 30 for members who bring potential members and FREE for potential members. New members can join at the event for just \$100, a savings of \$45.

**RSVP by September 20, 2004 to
(614) 464-3229 or staff@columbus-metroclub.org**

**Watch the coverage of the
Columbus Metropolitan Club
Forums on PBS:
The Ohio Channel**

ATTACHMENT 5

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Announcements and Moderator Introduction

Wednesday, October 13, 2004

Hyatt Regency Columbus

12:00 p.m. – 1:15 p.m.

George Soros:

America's Role in the World and the U.S. Presidential Election

Welcome and Announcements

12:00 LUNCH SERVED

12:15 JIM ELLIOTT INTRODUCES HIMSELF AND WELCOMES EVERYONE.

Welcome to the Columbus Metropolitan Club! I'm Jim Elliott, president of the CMC Board of Trustees, and I thank you for joining us for today's forum.

Before we begin, I'd like to ask everyone to take a moment to make sure that your pagers and cell phones are turned off as a courtesy to our speakers and those seated around you— thanks for your cooperation and consideration in this matter.

I. UPCOMING FORUMS & EVENTS – JIM ELLIOTT

We have some great forums planned over the next few weeks. . .

Tomorrow afternoon we'll be back at the Athletic Club to host the County Commissioner Debates. We will conduct two separate debates in order to accommodate the two distinct races. Each debate will be approximately 27 minutes in length. Incumbent County Commissioner Arlene Shoemaker will debate challenger Paula Brooks and Incumbent County Commissioner Mary Jo Kilroy will debate challenger David Goodman. Mike Jackson from WCMH Channel 4 will serve as moderator. Please note that we have moved the time for this debate to accommodate the ground-breaking for the YWCA's new family center - Lunch will be served at 12:30, the program will start at 12:45 and we will adjourn at 1:45.

On Wednesday, October 20 we'll be joined by YWCA President and CEO, JoAnna Williamson who will discuss the new YWCA Family Center. The forum will be moderated by YWCA Board Chairman, Yvette McGee Brown. *This forum is being sponsored by Miles McClellan Construction and Development.*

The last forum of this year's political season will be on Thursday, October 28 and will feature Tom Sawyer of Opinion Strategies for a look at up-to-date polling numbers in the state and national elections. *This forum is being sponsored by Grange Insurance.*

Finally, we're pleased to announce that we recently confirmed Dean Kamen, most notable for creating the Segway Human Transporter. Kamen has been named by Time Magazine as one of the most influential people of our time. He will bring a

Segway with him and will conduct a free-form discussion about innovation and better living through science. *This forum will be held at COSI and is being sponsored by AEP and WOSU.*

For more extensive information on upcoming CMC forums, please see the flyer on your table or visit our website at www.columbusmetroclub.org.

II. MEMBERSHIP – JIM ELLIOTT

The only way that the Columbus Metropolitan Club can continue to provide consistent, high-quality forums on a weekly basis is with your support. To join, simply fill out the yellow membership application at your table, give it to a CMC staff member when you leave today and you can take \$20 off the regular price of membership!

Additional information about membership is on your table – please see a staff member to make your reservation.

III. DONOR RECOGNITION – JIM ELLIOTT

CMC is a non profit organization with about 40% of our annual funding provided by the generosity of many corporate and private donors. Their support makes it possible to provide the quality programs we all enjoy.

A complete list of our sponsors is located in the flyer at your table. If you would like to join that list of supporters, please see any of our board members.

IV. INTRODUCTION OF AMBASSADOR MOOSE- JIM ELLIOTT

It is now my pleasure to welcome Ambassador George E. Moose, former Representative of the United States to the European Office of the United Nations, who will introduce George Soros.

V. QUESTION AND ANSWER SESSION – JIM ELLIOTT

JIM WILL ASK THE SPEAKER THE FIRST QUESTION AND MODERATE THE Q & A.

Thank you for your thought-provoking comments.

We have several hundred members and guests here today. As many of you already know, at CMC forums this is the time for questions from the audience.

We are quite aware that Mr. Soros' comments and the entire political atmosphere for this election is supercharged, but we respectfully ask that you NOT use our CMC microphone to make political statements.

As moderator, it's my responsibility to keep the Q & A on track. We appreciate your questions and appreciate you only asking questions and not imposing your own viewpoint.

VI. ADJOURN – JIM ELLIOTT

JIM ELLIOTT WILL THANK THE GEORGE SOROS, AMBASSADOR MOOSE AND THE AUDIENCE AND ADJOURN THE FORUM.

ATTACHMENT 6

2984422-3628

columbus metropolitan club

28 years of diversity • discussion • debate

Wednesday, October 20, 2004
Available online at www.southcoastnews.com

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Next **THURSDAY** at CMC • October 28, Noon - 1:15 p.m.

Forecast Election 2004: When Ohio Speaks, Everyone's Listening

Tom C. Sawyer, Ph.D., Opinion
Strategist

Sponsored by:



Just days away from November 2,
President and Owner of Opinion
Strategies

Thomas C. Sawyer, Ph.D. will present
Forecast Election 2004
... the riveting, latest and most comprehensive
statewide polling data to predict
Ohioans' "final answer" in the heated
presidential race, Issue 1 and
other statewide ballot questions.

Sawyer and his research associates
in the field annually conduct
two statewide telephone polls call-

ing 800 randomly selected Ohio voters
to discuss their top concerns, state
issues and candidates, the national
political scene, the economy, education,
health care, security, credibility of
professions/industries and lifestyle
trends. This poll is being conducted the
week of October 25 and will be presented
for the first time October 28.

With just a few questions for each topic,
this lively and entertaining Power Point
presentation previews Ohio voters' November 2
behavior with a margin of

error plus/minus 3-4% at .95 confidence level.

Get the news on Ohio's views
before it happens at Forecast
Election 2004.



Next **FRIDAY** at CMC • October 29, Noon - 1:15 p.m.

THIS FORUM WILL BE HELD AT COSI, 333 W. BROAD STREET

Dean's Machines: Better Living Through Science

Dean Kamen, president, DEKA
Research and Development Corp. &
chairman, Segway LLC

Sponsored by:



Time Magazine named him one of
the most influential people of our
time. Upon receiving the Heinz
Award in Technology, the Economy
and Employment in 1999, the
Heinz Family Philanthropies
had this to say:

"Dean Kamen embodies
the best attributes of the
engineer devoted to human
wellfare. His vocation - inventing
and developing innovative
medical devices - and his
avocation of inspiring
young people to become
excited about science
and technology evoke
his unbounded enthusiasm,
energy, and faith in our
future."

As an inventor and physicist,
Kamen has dedicated his life to

developing technologies that help
people lead better lives. His inventions
include a portable dialysis
machine, the INDEPENDENCE™
IBOT™ 3000 Mobility System, a
sophisticated mobility aid capable of
climbing stairs, navigating rough terrain,
raising the user to eye-level

with a standing person, and
the Segway™ Human
Transporter (HT), a self-balancing,
personal transportation device that's
designed to operate in the
pedestrian environment.

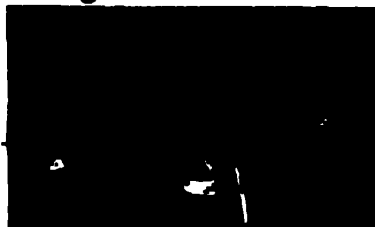
Kamen is also the founder of
FIRST (For Inspiration and
Recognition of Science and
Technology); a non-profit organization
dedicated to motivating the
next generation to understand, use
and enjoy science and technology.

CMC, in partnership with COSI,
is proud to host a forum featuring
one of the great thinkers of our
time. Kamen will bring a Segway
with him and conduct a free-ranging
discussion with the audience on the
subject of innovation. Space is limited
so make your reservations now!



October 13 at CMC...

George Soros Criticizes Bush Policy in Iraq



"If we re-elect Bush,
we face a vicious circle
of violence with no
end in sight. If we
elect him, we have a
chance."

— George Soros

Ambassador George Moose,
CMC President Jim Elliott and
speaker George Soros.

"Today we are, in fact, a
less secure country.
Bush's war in Iraq has
generated many more
people willing to kill us
than before 9-11."

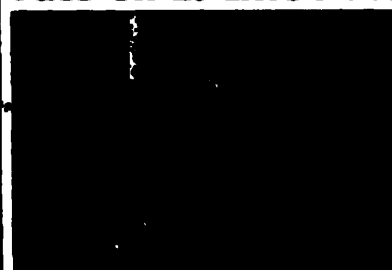
— George Soros



CMC members Robert Lamas and Mary
Tschann after the forum.

October 14 at CMC...

County Commissioner Candidates Face-off at CMC Debate



CMC Vice President Sony Swenson, candidate
and State Senator David Goodman,
moderator Mike Jackson of WCMH
Channel 4, Commissioner Arlene Shoemaker,
Commissioner Mary Jo Kilroy and candidate
Paula Brooks.

"My 21 years of experience stand for something
— they stand for dedication to community
and a strong constituent office."

— Commissioner Arlene Shoemaker

"Franklin County is at a
crossroads, and we need
energetic and cooperative
leadership."

"Why do I want to serve as
County Commissioner?
The County Commissioner
has an opportunity to
make a unique and positive
change for every citizen."

— David Goodman

"What we do for the
hardworking poor creates a
vision for a better community."

— Commissioner
Mary Jo Kilroy

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